



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

16 श्रावण 1939 (श०)

(सं० पटना 688) पटना, सोमवार, 7 अगस्त 2017

निर्वाचन विभाग

अधिसूचना

31 जुलाई 2017

सं० एम1-0020/2013-30—निर्वाचन अर्जी सं० 10/2015 से संबंधित भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या-82/बी आर -एल ए/ई पी/(10/2015)/ई एस-1/2017 दिनांक 13.07.2017 सर्वसाधारण की जानकारी के लिए प्रकाशित की जाती है।

बिहार-राज्यपाल के आदेश से,

सोहन कुमार ठाकुर,

अपर सचिव।

अधिसूचना

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001 तारीख 13 जुलाई, 2017/22 आषाढ, 1940 (शक)

सं 82/BR-LA/EP/(10/2015)/ES-1/2017:—लोक प्रतिनिधित्व अधिनियम 1951 (1951 की 43) की धारा 106(ख) के अनुसरण में, भारत निर्वाचन आयोग एतदद्वारा निर्वाचन अर्जी सं 10/2015 में दिये गये उच्च न्यायालय, पटना के तारीख 1 मई, 2017 के आदेश को प्रकाशित करता है।

आदेश से,
सुमित मुखर्जी,
प्रधान सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NOTIFICATION

Nirvachan Sadan, Ashoka Road, New Delhi-110001 Dated 13th, July, 2017/22 Ashadha, 1940 (Saka)

No. 82/BR-LA/EP/(10/2015)/ES-1/2017:—In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order dated the 1st May, 2017 of the High Court of Judicature at Patna in Election Petition No. 10 of 2015.

By Order,
SUMIT MUKHERJEE,
PRINCIPAL SECRETARY,
ELECTION COMMISSION OF INDIA.

IN THE HIGH COURT OF JUDICATURE AT PATNA

Election Petition No. 10 of 2015

Satyadeo Narain Arya son of Shivan Prasad, resident of Gandhi Tola, P.O. Rajgir, District Nalanda 803116.

.... Petitioner

Versus

Ravi Jyoti Kumar son of Bhim Singh, resident of Ward No. 45, Navtolia, P.O. Laheriasarai, District Darbhanga 846001.

.... Respondent

Appearance :

For the Petitioner/s : Mr. Sarvendu Kumar Verma, Adv.
For the Respondent's : Mr. Shambhu Narain Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
C.A.V. ORDER

18 1-05-2017

In the aforesaid election petition, after hearing learned counsel for the election petitioner and respondent on interlocutory application i.e. **I. A. No. 7902 of 2016**, which was filed by the respondent under. Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), order was reserved on 14-02-2017.

2. The election petitioner has approached this Court by filing the aforesaid petition under Sections 80, 80(A), 81 and 100 of the Representation of the People Act, 1951 for setting aside election of returned candidate/respondent namely Ravi Jyoti Kumar, who was declared elected on 08-11-2015 from 173 Rajgir (SC) Assembly Constituency.

3. In the election petition, the petitioner has mainly alleged against the respondent in its paragraph nos. 6, 9 and 10 of the election petition, which are quoted herein below:-

"6. That the Returned Candidate has filled up Column 5 (ii) of Form 26 of the Nomination Paper giving details of a criminal case pending in the Court of learned CJM, Jamtara bearing Jamtara P.S. Case No. 07 of 2007 under Section 379/427 IPC and has categorically mentioned within brackets that "cognizance has not been taken in the aforesaid case".

9. That it is relevant to submit for consideration that the Returned Candidate has filled up Column 5 (ii) of Form 26 and has made modification of Column 5 (ii) by writing within brackets that "cognizance has not been taken" and has thereby violated Article 19(1)(a) of the Constitution, wherein a voter of the aforesaid Constituency has a right to know about the contesting candidates including criminal 'antecedents. It is much more

fundamental and basic for survival of democracy and only then the little man may think over before making his choice of electing law breakers as law makers. It is, therefore, noteworthy to mention that writing within brackets "cognizance has not been taken" has resulted into misconstruing the voters.

10. That it is relevant to submit for consideration that the Returned Candidate has purposefully written so as that the voters get a wrong idea in regard to his pending criminal case. It is also relevant to submit for consideration that stepping into the shoes of Article 19(1)(a) of the Constitution of India, it is also desired that a voter should be given correct information and there should not be any misinformation and misrepresentation to the voters. If, at all cognizance has not been taken then the Returned Candidate was not required to furnish the information in Column 5 (ii) of Form 26 of the Nomination Paper and writing within brackets "cognizance has not been taken" has created a sense of confusion in the minds of voters as only cases where cognizance has been taken is only to be furnished in Column 5 (ii) of Form 26 of the Nomination Paper."

4. Short fact of the case is that for holding assembly election in 173 Rajgir. (SC) Assembly Constituency, the Returning Officer had issued Notification. As per Notification:-

- (i) Last date of filing nomination paper was fixed as 8th October, 2015,
- (ii) Date of scrutiny of nomination paper was fixed as 9th October, 2015,
- (iii) Date of withdrawal of candidature was 12th October, 2015,
- (iv) Date of poll was fixed as 28th October, 2015, and
- (v) Date of declaration of result as 8th November, 2015.

Pursuant to aforesaid Notification, the respondent presented his nomination paper on 05-10-2015. In the said election, altogether 17 candidates contested for 173 Rajgir (SC) Assembly Constituency. The election petitioner had contested the election from "Bhartiya Janata Party" on election symbol of "Lotus", whereas, the returned candidate namely Ravi Jyoti Kumar had contested from "Janata Dal (United)". In the said election, the returned candidate secured 62,009 votes, whereas, the election petitioner was declared as runner-up, having 56,619 votes. In paragraph - 6 of the election petition, the petitioner alleged that returned candidate had filled up column no. 5 (ii) of Form - 26 of Nomination Paper giving details of a criminal case pending in the court of learned CJM, Jamtara, being Jamtara P.S. Case No. 07/2007 for offence under Sections 379/427 of the Indian Penal Code. it was alleged in the said paragraph that the returned, candidate/respondent categorically mentioned within brackets that "cognizance has not been taken in the aforesaid case". It was claimed in the election petition that returned candidate had chosen to

overreach the instructions of Supreme Court of India and also Election Commission of India by creating sense of confusion in the mind of voters resulting into misinformation and misrepresentation. According to pleading, the said confusion, created by the returned candidate, had infringed the right to information of the voters guaranteed under Article 19(1)(a) of the Constitution of India and also against the direction of the Hon'ble Apex Court in a case reported in A.I.R. 2014 (Supreme Court) 344. (Resurgence India v. Election Commission of India). Along with election petition, the election petitioner has also brought on record nomination paper filled-up by the respondent, as Annexure -1, which was supported by affidavit.

5. In the election petition, earlier notice was issued and thereafter, the respondent appeared and filed statement of fact. In statement of fact, the respondent categorically stated that till the date of filing of the written statement, which was filed on 31-03-2016, no charge sheet was submitted against him and as such, being a true and honest citizen of India, he clearly mentioned in column net. 5 (ii) of Form - 26 of the Nomination Paper that "cognizance has not been taken in the aforesaid case". It was stated that though, there was no need to give reference of said case, since no cognizance order was passed, the respondent had given reference of pending case against him i.e. Jamtara P.S. Case No. 7 of 2007 for offence under Sections 379/427 of the Indian Penal Code. It was stated that the respondent had truly mentioned with clear heart the real stage of the case that no cognizance was taken in the aforesaid case. Subsequently, the respondent filed an interlocutory application, which was registered as I. A. No. 7902 of 2016. The said interlocutory application was filed under Order VII, Rule 1.1 of the CPC. It was pleaded that since the election petition was not containing concise statement of material fact regarding the allegation of corrupt practice, the election petition was liable to be rejected at its threshold.

6. In the interlocutory application, a specific plea has been taken by the returned candidate i.e. represent that had the respondent written "0" in column no. - 5 (ii) of Form - 26, instead of referring to Jamtara Case No. 7 of 2007, his nomination would not have been rejected, since the law requires that candidate is to mention only those cases, in which, cognizance was taken.

7. Sri Shambhu Narain Singh, learned counsel for the respondent on interlocutory application i.e. I. A. No. 7902 of 2016, referring to fact disclosed in the election petition itself, had argued that the election petitioner had not alleged that the respondent had given incorrect information. He submits that election petitioner had not alleged that in the case i.e. Jamtara P.S. Case No. 7 of 2007 cognizance was taken, rather a plea has been taken that though in Jamtara P.S. Case No. 7 of 2007, no cognizance order was passed and as such, as per column no. 5(11) of Form - Z6 of the Nomination Paper, the respondent was not required to mention, but even then, he had made 'this statement. According to learned counsel for the respondent, in absence of Making any false statement by the respondent or even in absence of any allegation of making false statement, there cannot be a case of any corrupt practice against the respondent. It has been argued that in none of the case, disclosure of true fact has been termed as "corrupt practice". As per entire pleading in the election petition, there is no need to infer about commission of corrupt practice against the respondent and in absence of those materials, there is no need to further proceed with the election petition and election petition is fit to be rejected by this Court while exercising power under Order VII Rule 11 of the CPC. According to learned counsel for the respondent, the election petition is in contravention of Section 83 of the Representation of Peoples Act, 1951, since, there is no concise statement of material fact disclosing any corrupt practice by the respondent.

Learned counsel for the respondent has placed reliance on a recent judgment of the Apex Court reported in AIR 2015 SUPREME COURT 16 (C. P. John v. Babu M. Palissery). Learned counsel for the respondent, placing reliance on a judgment of the Apex Court reported in AIR 2010 SUPREME COURT 1227 (Ram Sukh v. Dinesh Aggrawal), submits that since in the election petition, no specific case is made out regarding commission of any misconduct by the respondent, this Court, while exercising power under Code of Civil Procedure, 1908, is well competent to reject the election petition at this threshold.

8. Sri Sarvendu Kumar Verma, learned counsel appearing on behalf of election petitioner had tried to persuade the Court that by disclosing the case i.e. jamtara P.S. Case No. 7 of 2007 in Column No. 5(ii) of Form - 26, in which, no cognizance order was passed, the returned candidate had created confusion in the mind of the voters. According to him, without order of cognizance, there was no requirement for the respondent to incorporate the number of case in Column no. 5 (ii) of Form - 26. Sri Verma has emphasised that a voter has the elementary right to know full particulars of the candidate, who is to represent him/her. According to learned counsel for the petitioner, by way of referring to a case, in which order of cognizance was not passed, the respondent had created confusion in the mind of the voters, which was sufficient for rejection of nomination of respondent. Learned counsel for the petitioner has also placed heavy reliance on judgment of the Apex Court reported in AIR 2014 SUPREME COURT 344 (Resurgence India v. Election Commission of India). He has specifically referred to paragraph nos. 18 & 20 of the aforesaid judgment of the Apex Court, which are quoted hereinbelow:-

"18. Thus, this Court held that a voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution. It was further held that the voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Thus, in unequivocal terms, it is recognized that the citizen's right to know of the candidate who represents him in the Parliament will constitute an integral part of Article 19(1)(a) of the Constitution of India and any act, which is derogative of the fundamental rights is at the very outset ultra vires.

20. Let us now test whether the filing of affidavit stating that the information given in the affidavit is correct but leaving the contents blank would fulfill the objective behind filing the same. The reply to this question is a clear denial. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizen under Article 19(1)(a) of the Constitution of India. The citizens are required to have the necessary information at the time of filing of the nomination paper in order to make a choice of their voting. When a candidate files an affidavit with blank particulars, it renders the affidavit itself nugatory."

9. Learned counsel for the election petitioner has also placed reliance on number of judgment(s) of the Apex Court, which are as follows:-

(A) (2003) 4 Supreme Court Cases 399 (People's Union for Civil Liberties vs. Union of India),

- (B) MR 2007 SUPREME COURT 581 (Virender bath Gautam v. Satpal Singh),
- (C) AIR 2015 SUPREME COURT 147 (Ashraf Kokkur v. K. V. Abdul Khader etc.); and
- (D) AIR 2016 SUPREME COURT 3282 (R. K. Roja v. U. S. Rayudu and another).

10. Relying on aforesaid cases, Sri Verma, learned counsel for the election petitioner pleaded that the issue, raised in the election petition, is triable and election petition may not be dismissed at its threshold.

11. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On perusal of entire election petition, the Court feels difficulty in coming to the conclusion as to whether allegation of corrupt practice against the respondent is made out. It is true that in Column no. 5 (ii) of Form - 26 of the Nomination Paper, the returned candidate had disclosed the details of a criminal case i.e. jamtara P.S. Case No. 7 of 2007 and it was stated that in the said case, cognizance order was not passed. It is true that in column no. 5 (ii) of Form - 26, only those cases were required to be mentioned, in which cognizance order was already passed. If for the time being, it is assumed that the returned candidate had made an incorrect statement, in all fairness, this statement was detrimental to the returned candidate itself. Even if, the returned candidate had not mentioned about the case number and its fact in column no. 5 (ii) of Form 26 and instead he would have mentioned "Nil" or "Not applicable", his nomination paper was not required to be rejected. This shows that respondent honestly, even though was not, required to disclose the details of the case, had disclosed the said fact in Column no. 5 (ii) of Form - 26 of the Nomination Paper and as such, such disclosure can neither be termed as "corrupt practice" nor it can be treated as "a fact creating doubt in the mind of the voter", rather the respondent honestly disclosed all the facts to the notice of the voter(s). In such situation, none of the voter can claim that his right to Information regarding returned candidate was infringed.

12. So far as the cases, on which reliance has been placed by learned counsel for the election petitioner, which have been referred hereinabove, are concerned, after going through the aforesaid judgments, the Court is of the opinion that in none of the cases, it has been held that disclosure of true fact, even though not required, can be termed as "corrupt practice" adopted by a candidate.

13. So far as Ashraf Kokkur's case (supra) is concerned, in the said case, objection was raised that returned candidate was disqualified from contesting election, since he was holding an office of profit under the government, whereas, in the present case, allegation has been made that even though returned candidate was not required to disclose the fact regarding a case, in which cognizance order was not taken, he had disclosed such fact.

14. In R.K. Roja's case (supra), on which reliance was also placed by learned counsel for the election petitioner, the Hon'ble Apex Court had considered that if in an election petition, a petition under Order VII Rule 11 of the CPC is filed, the same is required to be decided immediately thereafter. In the said case, the trial court, after filing of the petition under Order VII, Rule 11 of the CPC, had posted the same for its disposal with the main petition. It would be appropriate to quote paragraph - 6 of R. K. Roja's case (supra), which is as follows:-

"6. Once an application is filed under Order VII, Rule 11 of the CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaintiff (Election Petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the

application for rejection before filing his written statement. In case, the application is rejected, the defendant is entitled to file his written statement thereafter (See Saleem Bhai and others v. State of Maharashtra and others). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote relevant portion from paragraph-20 of Sopan Sukhdeo Sable case (AIR 2004 SC 1801 Para 23) (supra):

"20.-Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant...."

15. In the election petition, save and except making an allegation that respondent had given the details of a case in which no cognizance order was passed, no other statement has been made to show any corrupt practice adopted by the returned candidate. The Court is of the opinion that unless the election petitioner comes forward with a definite plea that the allegation of corrupt practice is supported by legally acceptable materials, such election petition is required to be rejected. At this stage, the Court proposes to incorporate the observation of the Apex Court referred in paragraph - 20 of the C. P. John's case (supra), which is as follows:-

"20. Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, 'Rule 94-A and Form No. 25 of the Rules make the legal position clear that in the filing of an Election Petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the Election Petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the Court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the

provisions contained in Section 83(1) read along with Section 86 came to be incorporated while deciding this appeal."

16. In the facts and circumstances of the present case, it would be necessary to quote paragraph - 16 and 17 of the judgment of the Apex Court in Ram Sukh's case (supra), which is as follows:-

"16. Now, before examining the rival submissions in the light of the afore-stated legal position, it would be expedient to deal with another submission of learned counsel for the appellant that the High Court should not have exercised its power either under Order VI Rule 16 or Order VII Rule 11 of the Code to reject the election petition at the threshold. The argument is two-fold viz. (i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition and (ii) since Section 83 does not find a place in Section 86 of the Act, rejection of petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground.

17. In our opinion, both the contentions are misconceived and untenable. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of 'anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order VI Rule 16 and Order VII Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail. Coming to the second limb of the argument viz., absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer res-integra. A similar plea was negatived by a three-Judge Bench of this Court in Hardwari Lai v. Karma! Singh, wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said : (5CC p. 221, para 23),

"23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed."

17. On plain reading of the election petition, even without placing any reliance on the pleading made by the respondent, the Court is of the opinion that election petition does not contain concise statement of material fact showing any corrupt practice against the respondent and as such, the petition filed under Order VII, Rule 11 of the CPC i.e. I. A. No. 7902 of 2016 is fit to be allowed.

18. Accordingly, the interlocutory application i.e. I. A. No. 7902 of 2016 is allowed and consequently, election petition is dismissed at its threshold.

Rakesh Kumar, J.

अधीक्षक, सचिवालय मुद्रणालय,
बिहार, पटना द्वारा प्रकाशित एवं मुद्रित।

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